

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 60 OF 2006.

Ananda Yashwant Molavade. ... Appellant.
Versus.
Smt.Parubai Vishnu Molavade & ors. ... Respondents.

Shri Uday Warunjikar for the Appellant.
Shri R.N.Kachare for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

P.C.:

1. Heard Shri Warunjikar for the Appellant. The Appellant is the original Defendant No.6. The trial Court passed a decree dismissing the suit filed by the original Plaintiff for partition and separate possession. In the Appeal preferred by the legal representatives of the original Plaintiff, the first Appellate Court has passed a decree for partition. The decree for partition does not show that any particular share has been allotted to the present Appellant.

2. Shri Warunjikar appearing for the Appellant submitted that the Appellant has made out a specific case in the Written Statement that in the year 1952 there was a prior partition in which the entire suit property was partitioned and sharers were put in possession of their respective shares. He submitted that the original Plaintiff and his witnesses have admitted the factum of partition and therefore, the Appellate Court could not have passed a decree for partition in favour of the legal representatives of the

original Plaintiff. He has invited my attention to the relevant part of the written statement and the evidence of the original Plaintiff and his witnesses.

3. I have considered his submissions. In the written statement filed by the Appellant he has not come with a specific case that in the alleged earlier partition he was allotted a specified share in the suit properties. The Appellant has not stepped into the witness box. There is no specific finding recorded by the trial Court that the Appellant has a share in the property or that in earlier partition a specific property was allotted to the share of the Appellant.

4. In view of this position, it is obvious that the Appellant is not contending that any specified share in the property was allotted to him in the alleged earlier partition. Even the decree of the trial Court does not uphold existence of any right in favour of the Appellant and the same is the case with the Judgment of the Appellate Court. The Appellant did not challenge the findings of the trial Court. If this is the position, in my view, the Appellant cannot challenge the decree of partition passed by the Appellate Court. Only on this ground the Second Appeal is not entertained and the same is dismissed.

Judge.